



Senate

General Assembly

File No. 429

February Session, 2004

Substitute Senate Bill No. 291

Senate, April 5, 2004

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION FOR
THE TREATMENT OF PSYCHIATRIC DISABILITIES TO PERSONS
FOUND NOT COMPETENT TO STAND TRIAL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-540 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 [When] As used in sections 17a-540 to 17a-550, inclusive, and
4 section 3 of this act, unless otherwise expressly stated or unless the
5 context otherwise requires:

6 [(a)] (1) "Facility" means any inpatient or outpatient hospital, clinic
7 [] or other facility for the diagnosis, observation or treatment of
8 persons with psychiatric disabilities;

9 [(b)] (2) "Patient" means any person being treated in a facility;

10 [(c)] (3) "Persons with psychiatric disabilities" means those children

11 and adults who are suffering from one or more mental disorders, as
12 defined in the most recent edition of the American Psychiatric
13 Association's "Diagnostic and Statistical Manual of Mental Disorders";

14 [(d)] (4) "Voluntary patient" means any patient sixteen years of age
15 or older who applies in writing for and is admitted to a hospital for
16 observation, diagnosis or treatment of a mental disorder or any patient
17 under sixteen years of age whose parent or legal guardian applies in
18 writing for such observation, diagnosis or treatment;

19 [(e)] (5) "Involuntary patient" means any patient hospitalized
20 pursuant to an order of a judge of the Probate Court after an
21 appropriate hearing or a patient hospitalized for emergency diagnosis,
22 observation or treatment upon certification of a qualified physician;

23 [(f)] (6) "Family" means spouse or next of kin;

24 [(g)] (7) "Head of the hospital" or "head of the facility" means the
25 superintendent or medical director of a hospital or facility, or his
26 designated delegate;

27 [(h)] (8) "Informed consent" means permission given competently
28 and voluntarily after a patient has been informed of the reason for
29 treatment, the nature of the proposed treatment, the advantages or
30 disadvantages of the treatment, medically acceptable alternative
31 treatment, the risks associated with receiving the proposed treatment
32 and the risk of no treatment;

33 [(i)] (9) "Medically harmful" means capable of inflicting serious
34 mental or physical injury on the patient, or producing in the patient a
35 disturbed mental state or impaired judgment which may be grossly
36 detrimental to his physical or mental well being;

37 [(j)] (10) "Psychosurgery" means those operations defined as
38 lobotomy, psychiatric surgery, behavioral surgery [,] and all other
39 forms of brain surgery, if the surgery is performed for the purpose of
40 modification or control of thoughts, feelings, actions [,] or behavior
41 rather than the treatment of a known and diagnosed physical disease

42 of the brain;

43 [(k)] (11) "Shock therapy" means a form of psychiatric treatment in
44 which electric current, insulin, carbon dioxide [,] or indoklon, or other
45 similar [agents] agent, is administered to the patient and results in a
46 loss of consciousness or a convulsive or comatose reaction;

47 [(1)] (12) "Direct threat of harm" means that the patient's clinical
48 history demonstrates a pattern of serious physical injury or life-
49 threatening injury to self or to others which is caused by the
50 psychiatric disabilities with which the patient has been diagnosed and
51 is documented by objective medical and other factual evidence. Such
52 evidence of past pattern of dangerous behavior shall be manifested in
53 the patient's medical history and there shall exist a high probability
54 that the patient will inflict substantial harm on himself or others; and

55 (13) "Special limited conservator" means a licensed health care
56 provider with specialized training in the treatment of persons with
57 psychiatric disabilities appointed by a judge of the Probate Court with
58 specific authority to consent to the administration of medication to a
59 defendant during the pendency of such defendant's placement in the
60 custody of the Commissioner of Mental Health and Addiction Services
61 pursuant to section 54-56d, as amended.

62 Sec. 2. Section 17a-543 of the general statutes, as amended by section
63 1 of public act 03-31, is repealed and the following is substituted in lieu
64 thereof (*Effective October 1, 2004*):

65 (a) No patient shall receive medication for the treatment of the
66 psychiatric disabilities of such patient without the informed consent of
67 such patient, except in accordance with procedures set forth in
68 subsections (b), (d), (e) and (f) of this section or in accordance with
69 section 3 of this act or section 17a-566 or 54-56d, as amended.

70 (b) No medical or surgical procedures may be performed without
71 the patient's written informed consent or, if the patient has been
72 declared incapable of caring for himself or herself pursuant to sections

73 45a-644 to 45a-662, inclusive, and a conservator of the person has been
74 appointed pursuant to section 45a-650, the written consent of such
75 conservator. If the head of the hospital, in consultation with a
76 physician, determines that the condition of an involuntary patient not
77 declared incapable of caring for himself or herself pursuant to said
78 sections is of an extremely critical nature and such patient is incapable
79 of informed consent, medical or surgical procedures may be performed
80 with the written informed consent of: (1) The patient's conservator or
81 guardian, if he or she has one; (2) such person's next of kin; (3) a
82 person designated by the patient pursuant to section 1-56r, as
83 amended; or (4) a qualified physician appointed by a judge of the
84 Probate Court. Notwithstanding the provisions of this section, if
85 obtaining the consent provided for in this section would cause a
86 medically harmful delay to a voluntary or involuntary patient whose
87 condition is of an extremely critical nature, as determined by personal
88 observation by a physician or the senior clinician on duty, emergency
89 treatment may be provided without consent.

90 (c) No psychosurgery or shock therapy shall be administered to any
91 patient without such patient's written informed consent, except as
92 provided in this subsection. Such consent shall be for a maximum
93 period of thirty days and may be revoked at any time. If it is
94 determined by the head of the hospital and two qualified physicians
95 that the patient has become incapable of giving informed consent,
96 shock therapy may be administered upon order of the [Court of]
97 Probate Court if, after hearing, such court finds that the patient is
98 incapable of informed consent and there is no other, less intrusive
99 beneficial treatment. An order of the [Court of] Probate Court
100 authorizing the administration of shock therapy pursuant to this
101 subsection shall be effective for not more than forty-five days.

102 (d) A facility may establish an internal procedure governing
103 decisions concerning involuntary medication treatment for inpatients.
104 [This] Such procedure shall provide (1) that any decision concerning
105 involuntary medication treatment shall be made by a person who is
106 not employed by the facility in which the patient is receiving

107 treatment, provided the selection of such person shall not be made
108 until the patient's advocate has had reasonable opportunity to discuss
109 such selection with the facility, (2) written and oral notification to the
110 patient of available advocacy services, (3) notice to the patient and his
111 advocate, if one has been chosen, of any proceeding for the
112 determination of the necessity for involuntary treatment not less than
113 forty-eight hours prior to such proceeding, (4) the right of the patient
114 to representation during any such proceeding, (5) questioning of any
115 witness at any such proceeding including, if requested, one or both of
116 the physicians who made the determination pursuant to subsection (e)
117 of this section concerning the patient's capacity to give informed
118 consent and the necessity of medication for the patient's treatment, and
119 (6) a written decision. If a decision is made in accordance with the
120 standards set forth in this section that a patient shall receive
121 involuntary medication, and there is substantial probability that
122 without such medication for the treatment of the psychiatric
123 disabilities of such patient the condition of the patient will rapidly
124 deteriorate, such involuntary medication may be provided for a period
125 not to exceed thirty days or until a decision is made by the Probate
126 Court under subsection (e) or (f) of this section, whichever is sooner.

127 (e) (1) If it is determined by the head of the hospital and two
128 qualified physicians that a patient is incapable of giving informed
129 consent to medication for the treatment of such patient's psychiatric
130 disabilities and such medication is deemed to be necessary for such
131 patient's treatment, a facility may utilize the procedures established in
132 subsection (d) of this section and may apply to the [Court of] Probate
133 Court for appointment of a conservator of the person with specific
134 authority to consent to the administration of medication or, in a case
135 where a conservator of the person has previously been appointed
136 under section 45a-650, the facility or the conservator may petition the
137 Probate Court to grant such specific authority to the conservator. The
138 conservator shall meet with the patient and the physician, review the
139 patient's written record and consider the risks and benefits from the
140 medication, the likelihood and seriousness of adverse side effects, the
141 preferences of the patient, the patient's religious views, and the

142 prognosis with and without medication. After consideration of such
143 information, the conservator shall either consent to the patient
144 receiving medication for the treatment of the patient's psychiatric
145 disabilities or refuse to consent to the patient receiving such
146 medication.

147 (2) The authority of a conservator to consent to the administration of
148 medication under subdivision (1) of this subsection shall be effective
149 for [no] not more than one hundred twenty days. In the case of
150 continuous hospitalization of the patient beyond such one hundred
151 twenty days, if the head of the hospital and two qualified physicians
152 determine that the patient continues to be incapable of giving
153 informed consent to medication for the treatment of such patient's
154 psychiatric disabilities and such medication is deemed to be necessary
155 for such patient's treatment, the authority of the conservator to consent
156 to the administration of medication may be extended for a period not
157 to exceed one hundred twenty days by order of the Probate Court
158 without a hearing upon application by the head of the hospital.
159 Prompt notice of the order shall be given to the patient, conservator
160 and facility.

161 (3) If a conservator has been appointed for a patient or has been
162 granted specific authority under this subsection, the head of the
163 hospital, or his or her designee, shall notify the Probate Court upon the
164 discharge of such patient from the facility.

165 (f) (1) If it is determined by the head of the hospital and two
166 qualified physicians that (A) a patient is capable of giving informed
167 consent but refuses to consent to medication for treatment of such
168 patient's psychiatric disabilities, (B) there is no less intrusive beneficial
169 treatment, and (C) without medication, the psychiatric disabilities with
170 which the patient has been diagnosed will continue unabated [,] and
171 place the patient or others in direct threat of harm, [as defined in
172 subsection (l) of section 17a-540,] the facility may utilize the
173 procedures established in subsection (d) of this section and may apply
174 to the [Court of] Probate Court to authorize the administration to the

175 patient of medication for the treatment of the patient's psychiatric
176 disabilities, despite the refusal of the patient to consent to such
177 medication.

178 (2) An order authorizing the administration of medication under
179 subdivision (1) of this subsection shall be effective for [no] not more
180 than one hundred twenty days. In the case of continuous
181 hospitalization of the patient beyond such one hundred twenty days, if
182 the head of the hospital and two qualified physicians determine that
183 (A) the patient continues to be capable of giving informed consent but
184 refuses to consent to medication for treatment of such patient's
185 psychiatric disabilities, (B) there is no less intrusive beneficial
186 treatment, and (C) without medication, the psychiatric disabilities with
187 which the patient has been diagnosed will continue unabated [,] and
188 place the patient or others in direct threat of harm, [as defined in
189 subsection (l) of section 17a-540,] the order may be extended for a
190 period not to exceed one hundred twenty days by order of the Probate
191 Court without a hearing. Prompt notice of the order shall be given to
192 the patient and facility.

193 (g) If a decision has been made to administer involuntary
194 medication to a patient pursuant to subsection (d) of this section, the
195 patient may petition the [Court of] Probate Court to expedite the
196 hearing on an application filed by the facility pursuant to subsection
197 (e) or (f) of this section or, if no application has been filed, to hold a
198 hearing to decide whether to allow the administration of involuntary
199 medication. Either hearing shall be held within fifteen days after the
200 date of the patient's petition.

201 (h) For the purposes of this section, "voluntary patient" means any
202 patient sixteen years of age or older who applies in writing for, and is
203 admitted to, a hospital for observation, diagnosis or treatment of a
204 mental disorder.

205 (i) Unless there is a serious risk of harm to the patient or others,
206 based upon the patient's past history or current condition, nothing in
207 this section authorizes any form of involuntary medical, psychological

208 or psychiatric treatment of any patient who in the sincere practice of
209 his or her religious beliefs is being treated by prayer alone in
210 accordance with the principles and practices of a church or religious
211 denomination by a duly accredited practitioner or ordained minister,
212 priest or rabbi thereof. The Department of Mental Health and
213 Addiction Services shall adopt regulations, in accordance with chapter
214 54, to implement the purposes of this subsection.

215 Sec. 3. (NEW) (*Effective October 1, 2004*) (a) (1) If it is determined by
216 the head of the hospital and two qualified physicians that a patient
217 who is a defendant placed in the custody of the Commissioner of
218 Mental Health and Addiction Services pursuant to section 54-56d of
219 the general statutes, as amended, is incapable of giving informed
220 consent to medication for the treatment of such patient's psychiatric
221 disabilities and such medication is deemed to be necessary for such
222 patient's treatment, the facility in which such patient is placed may
223 petition the probate court for the district in which such facility is
224 located for appointment of a special limited conservator with specific
225 authority to consent to the administration of medication, provided an
226 employee of such facility shall not be appointed or serve as the special
227 limited conservator. The special limited conservator shall meet with
228 the patient and the physician, review the patient's written record and
229 consider the risks and benefits from the medication, the likelihood and
230 seriousness of adverse side effects, the preferences of the patient, the
231 patient's religious views, and the prognosis with and without
232 medication. After consideration of such information, the special
233 limited conservator shall either consent to the patient receiving
234 medication for the treatment of the patient's psychiatric disabilities or
235 refuse to consent to the patient receiving such medication.

236 (2) The authority of a special limited conservator to consent to the
237 administration of medication under subdivision (1) of this subsection
238 shall be effective for not more than one hundred twenty days. In the
239 case of continuous hospitalization of the patient beyond such one
240 hundred twenty days, if the head of the hospital and two qualified
241 physicians determine that the patient continues to be incapable of

242 giving informed consent to medication for the treatment of such
243 patient's psychiatric disabilities and such medication is deemed to be
244 necessary for such patient's treatment, the authority of the special
245 limited conservator to consent to the administration of medication may
246 be extended for a period not to exceed one hundred twenty days by
247 order of the Probate Court without a hearing upon application by the
248 head of the hospital. Prompt notice of the order shall be given to the
249 patient, special limited conservator and facility.

250 (3) If a special limited conservator has been appointed for a patient
251 under this subsection: (A) The special limited conservatorship shall
252 automatically terminate upon the termination of such patient's
253 placement in the custody of the Commissioner of Mental Health and
254 Addiction Services; and (B) the head of the hospital, or his or her
255 designee, shall notify the Probate Court upon the discharge of such
256 patient from the facility.

257 (4) The reasonable compensation of a special limited conservator
258 appointed under this subsection shall be established by the Probate
259 Court Administrator and paid from the Probate Court Administration
260 Fund.

261 (b) (1) If it is determined by the head of the hospital and two
262 qualified physicians that (A) a patient who is a defendant placed in the
263 custody of the Commissioner of Mental Health and Addiction Services
264 pursuant to section 54-56d of the general statutes, as amended, is
265 capable of giving informed consent but refuses to consent to
266 medication for treatment of such patient's psychiatric disabilities, (B)
267 there is no less intrusive beneficial treatment, and (C) without
268 medication, the psychiatric disabilities with which the patient has been
269 diagnosed will continue unabated and place the patient or others in
270 direct threat of harm, the facility in which such patient is placed may
271 petition the probate court for the district in which such facility is
272 located to authorize the administration to the patient of medication for
273 the treatment of the patient's psychiatric disabilities, despite the refusal
274 of the patient to consent to such medication.

275 (2) An order authorizing the administration of medication under
276 subdivision (1) of this subsection shall be effective for not more than
277 one hundred twenty days. In the case of continuous hospitalization of
278 the patient beyond such one hundred twenty days, if the head of the
279 hospital and two qualified physicians determine that (A) the patient
280 continues to be capable of giving informed consent but refuses to
281 consent to medication for treatment of such patient's psychiatric
282 disabilities, (B) there is no less intrusive beneficial treatment, and (C)
283 without medication, the psychiatric disabilities with which the patient
284 has been diagnosed will continue unabated and place the patient or
285 others in direct threat of harm, the order may be extended for a period
286 not to exceed one hundred twenty days by order of the Probate Court
287 without a hearing. Prompt notice of the order shall be given to the
288 patient and facility.

289 (c) Unless there is a serious risk of harm to the patient or others,
290 based upon the patient's past history or current condition, nothing in
291 this section authorizes any form of involuntary medical, psychological
292 or psychiatric treatment of any patient who in the sincere practice of
293 his or her religious beliefs is being treated by prayer alone in
294 accordance with the principles and practices of a church or religious
295 denomination by a duly accredited practitioner or ordained minister,
296 priest or rabbi thereof.

297 (d) Nothing in this section shall be construed to limit the application
298 of sections 45a-644 to 45a-663, inclusive, of the general statutes, except
299 as specifically provided in this section.

300 Sec. 4. Section 4-141 of the general statutes is repealed and the
301 following is substituted in lieu thereof (*Effective October 1, 2004*):

302 As used in this chapter: "Claim" means a petition for the payment or
303 refund of money by the state or for permission to sue the state; "just
304 claim" means a claim which in equity and justice the state should pay,
305 provided the state has caused damage or injury or has received a
306 benefit; "person" means any individual, firm, partnership, corporation,
307 limited liability company, association or other group, including

308 political subdivisions of the state; "state agency" includes every
309 department, division, board, office, commission, arm, agency and
310 institution of the state government, whatever its title or function, and
311 "state officers and employees" includes every person elected or
312 appointed to or employed in any office, position or post in the state
313 government, whatever such person's title, classification or function
314 and whether such person serves with or without remuneration or
315 compensation, including judges of probate courts, [and] employees of
316 such courts and special limited conservators appointed by such courts
317 pursuant to section 3 of this act. In addition to the foregoing, "state
318 officers and employees" includes attorneys appointed as victim
319 compensation commissioners, attorneys appointed by the Public
320 Defenders Services Commission as public defenders, assistant public
321 defenders or deputy assistant public defenders, and attorneys
322 appointed by the court as special assistant public defenders, the
323 Attorney General, the Deputy Attorney General and any associate
324 attorney general or assistant attorney general, any other attorneys
325 employed by any state agency, any commissioner of the Superior
326 Court hearing small claims matters or acting as a fact-finder, arbitrator
327 or magistrate or acting in any other quasi-judicial position, any person
328 appointed to a committee established by law for the purpose of
329 rendering services to the Judicial Department including, but not
330 limited to, the Legal Specialization Screening Committee, the State-
331 Wide Grievance Committee, the Client Security Fund Committee, and
332 the State Bar Examining Committee, any member of a
333 multidisciplinary team established by the Commissioner of Children
334 and Families pursuant to section 17a-106a, and any physicians or
335 psychologists employed by any state agency. "State officers and
336 employees" shall not include any medical or dental intern, resident or
337 fellow of The University of Connecticut when (1) the intern, resident or
338 fellow is assigned to a hospital affiliated with the university through
339 an integrated residency program, and (2) such hospital provides
340 protection against professional liability claims in an amount and
341 manner equivalent to that provided by the hospital to its full-time
342 physician employees.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Mental Health & Addiction Serv., Dept.	GF - Savings	Potential Minimal	Potential Minimal
Probate Court	PCAF - Cost	Minimal	Minimal

Note: GF=General Fund; PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill creates procedures and standards for involuntarily medicating certain criminal defendants for the purposes of restoring their competency to stand trial. To the extent that these provisions result in individuals who are hospitalized at Department of Mental Health and Addiction Services (DMHAS) facilities receiving medications that allow them to be discharged in a shorter period of time, a savings to the department may result. These savings would be dependent upon the number of such individuals as well as the intensity of services that they were receiving. Although the exact amount of savings cannot be determined, the overall number of cases to which this bill would apply, and therefore the related fiscal impact, are expected to be minimal.

The bill also clarifies the role and authority of the Probate Court in these matters. Passage of these provisions would result in a minimal fiscal impact.

OLR Bill Analysis

sSB 291

***AN ACT CONCERNING THE ADMINISTRATION OF MEDICATION
FOR THE TREATMENT OF PSYCHIATRIC DISABILITIES TO
PERSONS FOUND NOT COMPETENT TO STAND TRIAL*****SUMMARY:**

This bill creates procedures and standards for involuntarily medicating, for up to 120 days at a time, criminal defendants who are hospitalized at Connecticut Valley Hospital's Whiting Forensic Division for treatment to restore their competency to stand trial (i.e., the ability to understand the nature of the charges and assist in their defense). The procedures and standards differ depending on whether the patient is (1) unable, because of his illness, to give voluntary, informed consent or (2) able, but unwilling, to do so. In the former case, the bill authorizes a district probate judge to appoint a special limited conservator to make the decision. In the latter, it permits the hospital to obtain a probate court order to forcibly medicate a patient who is dangerous to himself or others.

The bill requires Department of Mental Health and Addiction Service facilities to notify probate courts when they discharge patients for whom conservators have been appointed. It also makes technical changes.

EFFECTIVE DATE: October 1, 2004

SPECIAL LIMITED CONSERVATORS

Before petitioning the probate court to appoint a special limited conservator, the hospital's head, or his designee, and two qualified physicians must agree that the defendant is incapable of giving informed consent and that medication is necessary for his treatment.

Special limited conservators must be licensed health care providers with specialized training in treating patients with psychiatric disabilities. They cannot be employed at the hospital where the defendant is admitted. The appointing judge must give them specific

authority to consent to the administration of medication. The probate court administrator must establish reasonable compensation rates and use probate court administration funds to pay them.

After appointment, a conservator must review the patient's records, meet with him and his physician, and decide whether to consent to the patient being medicated. In making this decision, he must consider:

1. the medication's risks and benefits, including the likelihood and seriousness of adverse side effects;
2. the patient's preferences and religious views; and
3. the prognosis with and without medication.

Conservators cannot consent to involuntary medication of patients whose sincere religious beliefs call for healing by prayer unless they pose a serious risk of harm to themselves or others.

Special conservators can exercise this authority for up to 120 days, with possible 120-day extensions when the petitioners notify the court that the conditions giving rise to the original order remain unchanged. The probate court can grant extensions without holding a hearing and must promptly notify the patient, conservator, and facility when it does so.

A defendant's discharge from the hospital automatically terminates the conservatorship. The hospital must notify the probate court when this occurs.

The bill gives special limited conservators some immunity from lawsuits arising from their actions. They cannot be sued in courts unless the claims commissioner gives the injured party permission to sue.

WHEN INFORMED CONSENT IS WITHHELD

The bill also permits the hospital to file a probate court petition to forcibly medicate a mentally competent defendant who refuses medication. The hospital's head, or his designee, and two qualified physicians must find that (1) there is no less intrusive beneficial treatment and (2) without medication, the patient's psychiatric disabilities will continue unabated and place the defendant or others in direct threat of harm. By law, "direct threat of harm" means that the

patient's clinical history demonstrates a pattern of serious physical injury or life-threatening injury to self or others and a high probability that the patient will repeat it unless medicated.

Involuntary medication orders may last for up to 120 days with possible 120 day extensions when the petitioners notify the court that the conditions giving rise to the original order remain unchanged. The probate court can grant extensions without holding a hearing and must promptly notify the patient and facility when it does so.

BACKGROUND

Related Bill

HB 5218 (File 148) reported favorably by the Judiciary Committee, requires court-ordered competency evaluations to include both, instead of one of, these findings in their reports (1) whether there is a substantial probability that an incompetent defendant will regain competency if committed to DMHAS for restoration treatment and (2) whether he appears to be eligible for civil commitment.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0